STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

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Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: CG Docket No. 158, CC Docket No. 98-170, and WC Docket 04-36.

Dear Ms. Dortch,

The Office of the Minnesota Attorney General ("Office") submits the following written comments to the Federal Communications Commission ("Commission") in response to the questions and issues raised in the Commission's Notice of Inquiry In the Matter of Consumer Information Disclosure, Truth-in-Billing and Billing Format, and IP-Enabled Services, released on August 28, 2009 ("NOI").

I. There is a Need for Clearer Billing Standards, Additional Information Disclosures to Consumers, and New Anti-Cramming Rules in the Telecommunications Industry.

Similar to the Commission, this Office has observed ongoing problems arising from the cramming of unauthorized charges on consumers' telephone bills, and the failure of wireless companies to provide adequate disclosures to consumers at the point of sale. Due in part to these ongoing problems, this Office continues to receive complaints from Minnesota consumers regarding telecommunications products and services and the business practices of telecommunications companies. Accordingly, the time is right for the Commission to address the myriad consumer-protection issues raised in its Notice of Inquiry by strengthening its current rules and enacting new rules that govern the telecommunications industry.

II. Cramming is a Substantial and Increasing Problem for Consumers.

Cramming is a substantial problem for consumers in Minnesota. At the present time, cramming of unauthorized charges onto telephone bills sent to consumers by their local exchange or interexchange ("landline") carrier constitute the bulk of the cramming complaints that this Office receives. However, complaints about cramming of charges onto the telephone bills of commercial mobile radio service ("CMRS" or "wireless") carriers also present a problem.

One scheme resulting in consumers frequently finding unauthorized charges on their landline telephone bills is for a crammer to treat a consumer's decision to sign up for online grocery coupons as "consent" to place charges on the consumer's telephone bill. When perusing a website for such items or benefits that are unrelated to telecommunications services, consumers often fail to notice the fine print buried somewhere within the website stating that signing up for the coupons amounts to authorization for a third-party service provider to place charges on the consumer's telephone bill.

In the CMRS industry, crammers are also utilizing improper methods to acquire a consumer's "consent" to crammed charges. For example, a recent internet scam involved an online "IQ Quiz" in which the consumer was required to provide his or her wireless telephone number to receive the consumer's quiz score. When the consumer provided the number, the consumer unwittingly signed up for a "premium" text messaging service, which was billed on the consumer's monthly wireless bill. Another cramming technique that relies on technology unique to the CMRS industry is for the crammer to send an unsolicited text message to a consumer's wireless phone. The text message states that if the consumer does not reply to the text message in a certain fashion, the consumer will be deemed to have "consented" to the crammer's provision of some unidentified and unexplained wireless service. When the consumer ignores the unexpected "junk" text from the unknown sender, a charge is improperly crammed onto the consumer's next wireless bill.

The current protections against cramming, while a good first step, are failing to stem the problem. Accordingly, this Office encourages the Commission to enact additional measures to combat cramming.

III. Current Truth-in-Billing Requirements Should be Retained and Strengthened.

The Commission has asked if any of the current truth-in-billing rules "are no longer necessary given the current marketplace."[1] This Office believes that the answer to this question is unequivocally "no," given the large and increasing number of consumer complaints about cramming, as well as the increasingly common practice of "bundling" many different types of services (telephone, data, internet, TV, etc.) into a single bill. The Commission's current truth-in-billing rules properly require, among other things, separation of charges by service provider and the clear and conspicuous identification of the service provider associated with each charge.[2] Removal of such basic standards has the potential to lead to even greater confusion regarding consumers' telephone bills and the specific charges contained therein, particularly given the ever-increasing complexity of such bills. There is no reason to allow telecommunications companies to bill consumers using unorganized bills in which charges and service providers are not clearly and conspicuously disclosed and plainly identified. Accordingly, this Office

[1] *See* NOI ¶ 17.
[2] *See* 47 C.F.R. § 62.2401(a)(1)-(2).

encourages the Commission to retain in full, and indeed strengthen, its current truth-in-billing rules.

A. Telephone Bill Formatting Changes Are Needed.

This Office encourages the Commission to strengthen and clarify 47 C.F.R. §§ 62.2401(a)(1) and (2) by enacting more concrete standards regarding what amounts to (i) "seperat[ing] a charge by service provider," and (ii) "clearly and conspicuously" identifying the service provider associated with each charge.

i. Clearer Separation of Charges by Service Provider is Needed.

With regard to separation of charges by service provider, this Office urges the Commission to mandate that third-party charges be contained on their own page, or at least segregated into their own section, of a consumer's telephone bill. Although it is unclear whether this type of separation is required under the truth-in-billing rules as currently enacted, some landline telephone companies already segregate third-party charges in such manners. For example, at least one carrier typically places all third-party charges on a separate page of its telephone bill, and discloses to consumers in bold print directly adjacent to each charge that the consumer has the right to dispute the charge. In addition, this Office is aware of another carrier that generally segregates third-party charges into either a separate section or page of the telephone bill, labeled in bold print "Third Party Charges." These types of bill formats at least increase the likelihood that consumers will recognize that their telephone bill contains third-party charges.

On the other end of the spectrum, the poor separation of third-party charges contained in some landline, and many wireless, telephone bills makes it even more difficult for consumers to recognize that such charges are contained in the bill. For example, in most wireless telephone bills reviewed by this Office, the crammed charges are listed only as one of many similar line items in the bill, and are not labeled as third-party charges. In this Office's experience, failure to segregate third-party charges from other charges leads to consumer confusion regarding the source of the charges and increases the likelihood that unauthorized charges by the crammer will go undetected (or will not be detected until several billing cycles have passed). This Office encourages the Commission to make clear that simply listing a third party charge as one of many line items on a bill is not sufficient "separation" of the charge under truth-in-billing rules.

ii. Current Truth-in-Billing Rules Have Not Resulted in the Clear and Conspicuous Identification of Service Providers.

With regard to the requirement of clearly and conspicuously identifying the service provider associated with each charge, this Office is unaware of any landline or wireless telephone bills that would serve as a useful model. In many wireless telephone bills, the third-party service provider is either not identified at all, or is difficult to discern due to its

identification in fine print buried among many other charge descriptions. In nearly all landline telephone bills, the billing agent that each third-party service provider uses is identified in large, bold print at the top of the page above the relevant charge, but the name of actual third-party service provider is buried in much smaller print further down in the bill.

The failure to clearly and conspicuously identify the service provider associated with each charge has caused massive confusion for Minnesota consumers. For example, of the landline cramming complaints that this Office has received so far in 2009, the complainants identified the billing agent as the sole culprit or a co-culprit responsible for the unauthorized charge in almost two-thirds of the complaints. When nearly two-thirds of cramming victims are unsure of the company responsible for the third-party charges appearing in their telephone bill, this overwhelmingly indicates that more concrete standards are needed governing the formatting of telephone bills (including a rule remedying the current practice of prominently listing the billing agent at the top of a bill instead of the actual service provider).[3]

It is important for consumers to be aware of the company with which they are doing business if they are to intelligently choose from the many different telecommunications companies marketing similar products and services. As the Commission has already found, "[i]t is critical for consumers to receive accurate billing information from their carriers to take full advantage of the benefits of a competitive marketplace."[4] A telecommunications company that is able to confuse consumers about its identity stifles competition within the industry by blurring the difference between companies that provide exceptional services and those that engage in disreputable business practices. Such confusion harms not only consumers, but also reputable telecommunications companies that attempt to compete fairly and work hard to cultivate customer good will.

Moreover, consumer confusion in identifying the actual third-party service provider responsible for the unauthorized charge frequently results in the consumer naming the wrong company in any complaint filed with the relevant governmental enforcement agency. This mis-identification, in turn, allows the actual crammer to escape detection for a longer period of time, and makes it more difficult for regulatory agencies to track the source of cramming complaints and focus their enforcement efforts accordingly.

iii. Telephone Bill Formatting Rules With Concrete Standards are Needed.

For the above reasons, this Office encourages the Commission to enact more stringent truth-in-billing rules in regards to telephone-bill formatting that include concrete standards governing what amounts to the "separation" of third-party charges and the "clear and conspicuous" identification of the service provider associated with each charge. Regarding the

[3] Such practices already arguably violate the Commission's truth-in-billing requirements because the rules require that the *service provider* be "clearly and conspicuously" identified. *See* 47 C.F.R. § 64.2401(a)(1).
[4] In the Matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170, 20 FCC Rcd 6448, 6457 ¶ 18 (Mar. 18, 2005).

separation of charges, this Office encourages the Commission to mandate that all third party charges be contained on their own page, or separately titled section, of the telephone bill. This separate page or section also should contain a notice explaining to consumers that a third party is responsible for the charge, and that the consumer has right to dispute the charge if it is unauthorized. Regarding the clear and conspicuous requirement, this Office encourages the Commission to consider prohibiting a third-party service provider from listing the name of its billing agent in a consumer's telephone bill.[5] This Office can discern no reason to do so other than to confuse the consumer about the true source of the unauthorized third-party charges. In the alternative, the Commission should consider requiring that the actual third-party service provider be the most prominently featured name associated with the third-party charges; if the third-party service provider desires to list its billing agent, it should be listed after its own name in the bill, and identified in a font no larger than that identifying the service provider.

B. Further Restrictions Should be Placed on Billing Agents Resolving Customer Billing Disputes.

47 C.F.R. § 64.2401(d) currently requires that telephone bills contain a telephone number "by which subscribers may inquire or dispute any charges on the bill." The rule goes on to state, however, that it is permissible for service providers to list their billing agent's telephone number provided that the billing agent "possesses sufficient information to answer questions concerning the subscriber's account and is fully authorized to resolve the consumer's complaints on the carrier's behalf." This Office encourages the Commission to consider requiring billing agents to meet stricter requirements before being allowed to resolve disputes about unauthorized third-party charges appearing in telephone bills, as it is this Office's observation that many crammers attempt to "hide" behind their billing agent when placing unauthorized charges on consumers' telephone bills.

This Office has received numerous complaints from consumers who called a billing agent using the number listed in their telephone bill to dispute an unauthorized charge, only to have the billing agent refuse to resolve the issue. Frequently, the billing agent simply tells the consumer that the agent only bills for the third-party service provider, gives the consumer the provider's number, and tells the consumer to contact the provider directly. This practice has the effect of making it more burdensome and time consuming for consumers to dispute unauthorized charges that never should have been placed on their bill in the first place. Other times, Minnesota consumers have stated that the billing agent acted in a rude or incompetent manner, or refused to credit the consumer in full for the unauthorized charge. Moreover, this Office has received complaints from consumers stating that crammed charges continue to appear on their bills three, four, and five months after the consumers first contacted the billing agent to dispute the charge, necessitating new telephone calls about the unauthorized charges each month. In short, the

[5] Such a rule would not be inconsistent with 47 C.F.R. § 64.2401(d). This rule merely states a third-party may, if it chooses, provide the *telephone number* of its billing agent to consumers for the purpose of resolving disputes instead of its own telephone number. Subpart (d) in no way speaks to the manner in which the parties responsible for third-party charges should be identified in consumers' telephone bills.

cramming complaints filed with this Office indicate that billing agents have a poor track record in resolving consumer complaints.

For this reason, this Office encourages the Commission to consider enacting new rules governing the manner in which billing agents are permitted to resolve consumer complaints. For example, the Commission could enact a rule prohibiting a billing agent from contracting to handle a third-party service provider's consumer complaints if the contract provides a financial incentive for the billing agent to unreasonably deny or dispute a consumer's claim that the third party's charge was crammed onto the consumer's telephone bill. The Commission already has enacted an analogous rule in the slamming context by requiring that third-party verifiers have no financial incentive to successfully verify a consumer's change in his or her preferred interexchange telephone carrier.[6] In addition, the Commission could require billing agents and third-party service providers to act more promptly when a consumer disputes a charge, in order to stop the unauthorized charge from appearing on a consumer's bill three, four, and five months after the consumer disputed the charge. This Office believes that such restrictions would incentivize billing agents to provide more responsive customer service, and negate the need for a consumer to call several different entities multiple months in a row in order to resolve a crammed charge that appeared on their telephone bill.

C. Information Should be Included in Telephone Bills Regarding How to Contact Regulatory Agencies.

This Office also encourages the Commission to consider requiring the inclusion of some type of language in telephone bills stating that if the consumer did not authorize a third-party charge to appear in the bill, the consumer can contact the Commission, the state attorney general's office, public utilities commission to file a complaint. While many consumers will contact their preferred telephone carrier about the unauthorized charges, they often are unaware that they may file a complaint with the appropriate government enforcement agency, or do not know which agency to contact. The inclusion of such information in consumers' telephone bills would further appraise crammed consumers of their available remedies, and empower them to more easily file complaints about disreputable third-party service providers. In addition, such a notice would facilitate useful and timely feedback from consumers regarding problem companies that are engaging in cramming. A notice on the page of the bill containing the third-party charges would be the most effective place to include such language.

IV. A Third-Party Billing Block Option Would Substantially Reduce Cramming.

Consumers who file cramming complaints with this Office often express surprise that third parties are able to place charges on their telephone bills simply by making a request to their telephone carrier. This Office encourages the Commission to consider enacting a new rule that would give consumers the option to block the placement of third-party charges on their monthly

[6] *See* 47 C.F.R. § 64.1120(c)(3).

telephone bill. Such a rule would empower consumers by allowing them to decide what charges should be included on their telephone bill, instead of leaving this choice with a third-party service provider of unknown reputability.

This Office believes that a third-party billing block option would perhaps be an effective way to empower consumers to protect themselves from cramming. Permitting a consumer to instruct his or her landline or CMRS carrier to reject any third-party charges without first obtaining the consumer's express consent would remove the factual circumstance that crammers rely upon to make their illegal practice profitable: that the consumer will unwittingly or mistakenly pay the crammed charge. If a third-party service provider is required to bill a consumer directly, there is less chance that the charge will go unnoticed by the consumer, or that the consumer will mistakenly assume that the charge is a legitimate charge billed by his or her preferred landline or CMRS carrier. Moreover, this Office believes that a third-party billing block option is especially well-suited to the cramming context because this Office has received numerous complaints from consumers about being repeatedly crammed by the same third-party service provider over the course of several years. By placing a third-party billing block on a landline or wireless telephone account, a consumer could, in all likelihood, end any future cramming problems.

This Office does not believe that such a third-party billing block option would be too drastic a step, stifle innovation in the telecommunications industry, or unreasonably raise costs for consumers. First, it is this Office's understanding that some telephone carriers already offer their customers the option to block third-party charges from being included in their telephone bills. This fact is indicative of the feasibility of such a rule. Second, as the Commission is well aware, the telecommunications industry is the *exception* in regards to permitting one business to bill a customer through use of another business' monthly bill. Lastly, the Commission has already enacted an analogous rule in the slamming context, allowing consumers to place a preferred telephone carrier "freeze" on their telephone account with their local-exchange carrier. Such freezes prevent local-exchange carriers from processing a change request concerning a consumer's preferred interexchange carrier unless the consumer gives the local-exchange carrier from whom the freeze was requested his or her express consent to the switch.[7] This Office has observed that this freeze rule is an effective way in which consumers can reduce the likelihood that their preferred interexchange carrier will be slammed, and believes an analogous third-party billing block option likely would reduce instances of cramming of unauthorized third-party charges onto consumers' telephone bills.

V. Point-of-Sale Disclosures in the Wireless Industry Should Be Strengthened.

The Commission also seeks comment "on whether consumers are receiving adequate point-of-sale disclosures," particularly in regards to the wireless industry's provision of

[7] *See* 47 C.F.R. § 64.1190.

information on the attributes of service plans, early termination fees, and "free" or "discounted" products.

This Office believes that existing point-of-sale disclosures are insufficient. In fact, this Office is currently involved in litigation with Sprint Nextel, in part, over the inadequacy its disclosures at the point of sale.[8] This Office's Complaint against Sprint Nextel alleges, among other things, that:

> 19. When some consumers have contacted Defendants to make small changes to their existing plans, such as to add additional minutes, a phone, or phone features, Defendants have imposed a one to two year contract extension or even a new contract upon the consumers without adequately informing those consumers that the changes result in the extension of an existing contract or the acceptance of a new contract or obtaining meaningful consent to the contract extension or new contract. In some cases, Defendants' customer service representatives have told consumers that these minor changes to their accounts *would not* result in a contract extension, but then have extended the consumers' contracts despite this representation. Other consumers report that Defendants have mislead them by making unauthorized changes to their service plan. Sometimes, these unauthorized changes are not discovered by the consumer until they cancel their wireless service in accordance with their contract, and then are hit with large termination fees.
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> 20. Defendants have also extended consumers' contracts by actively marketing to existing consumers new products and services without adequately informing the consumer that the acceptance of the offer would result in a contract extension. Unbeknownst to some consumers, acceptance of a new product or service, such as an upgraded phone or additional minutes, has resulted in an extension of their existing contract term or even a whole new contract.
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> 21. Defendants have also offered consumers what is described by Defendants as a "courtesy discount" without adequately notifying the consumers that by receiving the discount, their contract was extended or a new contract was created.
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> 22. When some consumers have asked Defendants for a copy of their alleged new contracts or evidence there was a contract extension, Defendants have stated that they do not have a copy of the contract to which they insist the

[8] *See* State, by its Attorney General, Lori Swanson v. Sprint Nextel Corporation, d/b/a Sprint Nextel, Nextel or Sprint and f/k/a Sprint Corporation; Sprint Spectrum, L.P. a/k/a Sprint PCS; Northern PCS Services, LLC; Sprint Solutions, Inc.; Sprint/United Management Company; Nextel Retail Stores, LLC; Nextel Operations Inc.; Nextel Partners Operating Corp.; Nextel West Corp.; and Nextel West Services, LLC, Court File No. 27-CV-0720108 (Minn. Dist. Ct., 4th Judicial Dist.).

consumer is bound, and have refused to provide the consumer with a copy of a contract outlining the terms. Further, Defendants have explicitly told their telemarketers to not tell the consumers that their contract is up or about to expire when making an offer.

To date, the State of Minnesota has produced to Sprint Nextel more than 350 complaints that it has received from Minnesota consumers complaining about these and other related business practices. In addition, the State of Minnesota has gathered and produced more than 100 affidavits from Minnesota consumers who indicate that Sprint Nextel extended their wireless contracts or entered them into new wireless contracts without making appropriate disclosures or obtaining proper consent. Moreover, documents and information gathered by this Office during the course of its investigation and in discovery lend further support for its claims.[9]

This Office believes that the enactment of rules mandating clear and conspicuous disclosure of all material contract terms to consumers before such consumers enter into a new wireless contract or renew their wireless contract is necessary and appropriate. The CTIA code, released in 2003, failed to stem the types of practices that precipitated this Office's lawsuit against Sprint Nextel. Mandatory and enforceable rules enacted by the Commission, as opposed to voluntary industry codes such as those adopted by CTIA, are required to ensure that wireless carriers fully disclose the terms of their contracts to consumers and obtain appropriate consent from consumers to those terms.

VI. Conclusion.

We ask that the Commission consider these comments in connection with its August 28, 2009 Notice of Inquiry. In the meantime, please feel free to contact this Office if there is any additional information that would be helpful to the Commission in considering the above comments.

Sincerely,

LORI SWANSON
Attorney General

AG: #2508245-v1

[9] Regrettably, Sprint Nextel has designated almost the entirety of its production to this Office as "confidential," and therefore this Office is unable, at this time, to more specifically discuss Sprint Nextel's production or share the documents and information that it has produced.